WC 10-39

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February 5, 2010

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BY HAND DELIVERY
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Room TW-A325
Washington, DC 20554

FILED
FEB 1 ...
Federal ... Office of the Secretary

Attention: Wireline Competition Bureau

Re: Petition of Virgin Islands Telephone Corporation for Election of Price Cap Regulation and for Limited Waiver of Universal Service Rules

Dear Ms. Dortch:

On behalf of the Virgin Islands Telephone Corporation ("VITELCO"), enclosed for filing is an original and four (4) copies of the Petition of Virgin Islands Telephone Corporation for Election of Price Cap Regulation and for Limited Waiver of Universal Service Rules ("Petition"). Also enclosed is a completed FCC Form 159 Remittance Advice and a check in the amount of $7,725.00 for payment of the filing fee in connection with the Petition.

Please date stamp and return the enclosed extra copy of this filing in the stamped self-addressed envelope provided. Should you have any question, please contact the undersigned at (202) 719-7524.

Respectfully submitted,

Bennett Ross
Edgar Class

Enclosures

cc: Albert Lewis
Pam Arluk

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX # 979091	SPECIAL USE ONLY
	FCC USE ONLY

SECTION A – PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Wiley Rein LLP	(3) TOTAL AMOUNT PAID (U S Dollars and cents) $7,725.00	
(4) STREET ADDRESS LINE NO 1 1776 K Street, NW		
(5) STREET ADDRESS LINE NO 2		
(6) CITY Washington	(7) STATE DC	(8) ZIP CODE 20006
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-719-7000	(10) COUNTRY CODE (if not in U S.A.)	

FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN) 0002-1517-44	(12) FCC USE ONLY

IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)
COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME Virgin Island Telephone Company		
(14) STREET ADDRESS LINE NO 1 Elisa Hodges, CFO		
(15) STREET ADDRESS LINE NO 2 4611 Tutu Park		
(16) CITY St. Thomas	(17) STATE VI	(18) ZIP CODE 00802
(19) DAYTIME TELEPHONE NUMBER (include area code) 340.715.8623	(20) COUNTRY CODE (if not in U.S A)	

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN) 0004555595	(22) FCC USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE BEA	(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC) $7,725.00	(27A) TOTAL FEE $7,725.00	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	

SECTION D – CERTIFICATION

CERTIFICATION STATEMENT
I, Edgar Class, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief

SIGNATURE ________ DATE 2/5/2010

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD____ VISA____ AMEX____ DISCOVER____

ACCOUNT NUMBER____________ EXPIRATION DATE____________

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described

SIGNATURE____________ DATE____________

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Virgin Islands Telephone Corporation For Election of Price Cap Regulation and For Limited Waiver of Pricing and Universal Service Rules	))))	WC Docket No. 10-____

PETITION OF VIRGIN ISLANDS TELEPHONE CORPORATION FOR ELECTION OF PRICE CAP REGULATION AND FOR LIMITED WAIVER OF UNIVERSAL SERVICE RULES

Consistent with the framework established by the Commission in its *Windstream Order*,[1] the Virgin Islands Telephone Corporation d/b/a Innovative Telephone ("VITELCO") respectfully petitions the Commission for the election of price cap regulation no later than July 1, 2010, and, to the extent necessary, limited waivers of certain universal service high-cost support rules related to VITELCO's election. This relief will enable VITELCO – a carrier facing unique challenges in serving insular areas such as the United States Virgin Islands ("USVI") – to implement price cap regulation through a reasonable transition mechanism, which would be consistent with the Commission's longstanding policy and practice of promoting efficient forms of regulation. It also would allow VITELCO and its customers to enjoy the same public interest benefits recently extended to other carriers and their customers.[2]

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1 *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, Order, 23 FCC Rcd 5294 (2008) ("*Windstream Order*").

2 *See Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, Order, 23 FCC Rcd 7353 (WCB 2008) ("*Combined Price Cap Order*"); *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland,*

I. INTRODUCTION AND SUMMARY

Because price cap regulation creates proper investment incentives and promotes competition – in stark contrast to rate-of-return regulation – the Commission's rules expressly permit a local exchange carrier ("LEC") such as VITELCO to elect price cap regulation.[3] However, the current regulatory framework for price cap carriers adopted in the Commission's *CALLS Order* did not leave a clear path for a carrier to convert to price cap regulation.[4] In fact, the Commission has suggested that CALLS is not even available to new carriers.[5] Thus, until recently, the means by which a rate-of-return carrier could effectuate an election of price cap regulation was unclear.

In its *Windstream Order* and subsequent price cap conversion decisions, however, the Commission established a framework by which a rate-of-return carrier can elect price cap regulation. VITELCO proposes to convert to price cap regulation based on this framework, with some minor modifications summarized below:

Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief, Order, 24 FCC Rcd 4664 (WCB 2009) ("*ACS Order*"); *CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, Order, 24 FCC Rcd 4677 (WCB 2009) ("*CenturyTel Order*").

3 47 C.F.R. § 61.41(a)(3).

4 *See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *on remand*, 18 FCC Rcd 14976 (2003); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163-4164 (2004) ("*MAG Further Notice*").

5 *MAG Further Notice*, 19 FCC Rcd at 4163-4164.

Switched Access. VITELCO proposes to convert its switched access rates to the price cap access rate structure established in the *CALLS Order*. This would result in VITELCO reducing its average traffic sensitive ("ATS") switched access rates, which are currently \$0.01317 per minute, to \$0.0065 per minute as required by Section 61.3(qq), using a X-factor of 6.5 percent.

Special Access. VITELCO proposes that price cap rates be initialized at current rate-of-return levels without further reductions. This approach is consistent with the *CALLS Order* and was adopted by the Commission in its *Windstream Order* and subsequently embraced in the *Combined Price Cap Order*, the *ACS Order*, and the *CenturyTel Order*.[6] VITELCO has limited special access services, and no reductions in special access rates should be required in connection with VITELCO's election of price cap regulation.

Universal Service. While seeking to take advantage of the efficiencies of price cap regulation, VITELCO will require continued receipt of universal service support following the transition to price cap regulation. Because of the unique nature of the USVI and the significant challenges to VITELCO as the carrier-of-last resort serving the islands, VITELCO's election of price cap regulation would not be feasible without the continued availability of universal service support consistent with the *CALLS Order*. Under the circumstances, VITELCO proposes to continue receiving Interstate Common Line Support ("ICLS") calculated on a per line amount as is the case with Interstate Access Support ("IAS") under CALLS, subject to the same stipulations in the *Windstream Order*. Because of the critical importance of its universal service support, VITELCO's election of price cap regulation is conditioned on the Commission's granting the specific pricing and universal service waivers requested herein.

Price Cap Structural Rules. VITELCO commits to comply with the rate structure rules established by the Commission in its *Windstream Order* and followed in its subsequent price cap conversion decisions. VITELCO would adhere to these rules in its price cap annual access filings, the first of which VITELCO proposes would be effective July 1, 2010.

II. VITELCO'S ELECTION OF PRICE CAP REGULATION IS IN THE PUBLIC INTEREST.

The Commission uniformly has recognized the public interest benefits of price cap regulation. Twenty years ago, the Commission concluded that price cap regulation is preferable to rate-of-return regulation, noting that the former "permit[s] LECs to migrate their rates toward a set of prices that enhances efficiency," while the latter involves "regulators [that] dictate prices on the basis of fully distributed costing principles."[7] As the Commission repeatedly has acknowledged, "rate-of-return regulation provides few incentives for carriers to become more innovative and efficient."[8] Rate-of-return regulation eliminates the profit incentive for carriers to "introduce new and innovative services, because ... [carriers are not] permitted to retain the additional earnings from the new services."[9] In contrast to rate-of-return regulation, the

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6 *Windstream Order*, 23 FCC Rcd at 5302; *Combined Price Cap Order*, 23 FCC Rcd at 7363; *ACS Order*, 24 FCC Rcd at 4672; *CenturyTel Order*, 24 FCC Rcd at 4684.

7 *Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6791 (1990) ("*LEC Price Cap Order*")

8 *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 8973 (1995) ("*LEC Price Cap Performance Review*"); *see also LEC Price Cap Order*, 5 FCC Rcd at 6791 (explaining that rate-of-return regulation "is not the best" regulatory practice); *CALLS Order*, 15 FCC Rcd at 12968 (explaining that "[r]egulatory structures that base a firm's allowable rates directly on the reported costs of the individual firm can create perverse incentives, because reimbursing the firm's costs removes the incentive to reduce costs and improve productive efficiency").

9 *LEC Price Cap Performance Review*, 10 FCC Rcd at 8973; *see also LEC Price Cap Order*, 5 FCC Rcd at 6790 ("Our view is that rate of return does not provide sufficient incentives for broad innovations in the way firms do business").

Commission has found that price cap regulation results in several public interest benefits, "including incentives for carriers to become more productive, innovative, and efficient" as well as consumer benefits resulting from "lower access prices."[10]

These public interest benefits will not be fully realized if VITELCO continues to be subject to rate-of-return regulation. VITELCO is operating in an increasingly competitive market for which rate-of-return regulation is ill-suited. Currently, there are five facilities-based wireless providers in the USVI (AT&T Mobility, Sprint Nextel, Centennial, Innovative Wireless[11] and T-Mobile[12]), in addition to several mobile virtual network operators such as Virgin Mobile USA. Due to the broad availability of wireless alternatives and as a result of the general economic conditions on the islands, many USVI customers have "cut the cord," opting to rely solely upon wireless devices to meet their telecommunications needs. As a consequence, VITELCO has experienced considerable erosion in its switched access lines; VITELCO has a total of 57,522 switched access lines as of November 30, 2009, which represents more than a 15 percent decline in its total switched access lines from December 31, 2005.

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10 *See, e.g., Combined Price Cap Order*, 23 FCC Rcd at 7358; *ACS Order* 24 FCC Rcd at 4667; *CenturyTel Order*, 24 FCC Rcd at 4680; *see also CALLS Order,* 15 FCC Rcd at 12969 (explaining that under price cap regulation "individual companies retain an incentive to cut costs and to produce efficiently, because in the short run their behavior has no effect on the prices they are permitted to charge, and they are able to keep any additional profits resulting from reduced costs"); *LEC Price Cap Performance Review*, 10 FCC Rcd at 8965 (explaining that price cap regulation "creates incentives for LECs to set prices for [interstate] services at lower, more efficient levels in order to generate greater usage of the telephone network"); *LEC Price Cap Order*, 5 FCC Rcd at 6790 (concluding that price cap regulation "generates powerful incentives to innovate").

11 Innovative Wireless and VITELCO are affiliated, as both are wholly owned subsidiaries of the Bankruptcy Estate of Innovative Communication Corporation.

12 T-Mobile does not currently sell service locally, but does own and operate an existing network of facilities in the U.S. Virgin Islands.

In light of these trends, VITELCO must increase efficiency and continue to deploy new and innovative services at competitive prices in order to retain and attract customers. Converting to price cap regulation would permit VITELCO to do so.

III. THE *WINDSTREAM ORDER* ESTABLISHES A FRAMEWORK THAT VITELCO SEEKS TO UTILIZE TO CONVERT TO PRICE CAP REGULATION.

Despite the Commission's rules expressly permitting an incumbent LEC such as VITELCO to elect price cap regulation and notwithstanding the Commission's preference for price cap regulation over rate-of-return regulation, the process for effectuating VITELCO's transition to price cap regulation had been unclear. The Commission's price cap regime as set forth in the *CALLS Order,* which remains in effect, did not address the issue of carriers electing price cap regulation on a post-CALLS basis. And the Commission suggested that CALLS should not be available to new carriers or study areas and expressed the view that its rules "should be amended to clarify that new carriers or carrier study areas may not elect [the CALLS] plan,"[13] even though its rule permitting an incumbent LEC to elect price cap regulation remains in place and has not been modified.

However, in the *Windstream Order*, the Commission provided much needed clarity by establishing a framework for rate-of-return carriers to transition to price cap regulation – an approach the Commission subsequently followed in allowing Puerto Rico Telephone, Consolidated, Frontier, ACS, and CenturyTel to convert to price cap regulation. Specifically, in granting Windstream's petition to elect price cap regulation, the Commission directed

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13 *MAG Further Notice,* 19 FCC Rcd at 4163, ¶ 93 (tentatively concluding "that the CALLS plan was not designed to be open to new carriers or study areas" and noting that "CALLS was not intended to accommodate additional entry" because "in adopting the plan, the Commission made no provision for how the universal service component of the CALLS plan would address future expansion to new carriers").

Windstream to establish price cap indices ("PCI") for its price cap baskets using January 1, 2008 and 2007 base period demand.[14] Windstream was required to set its ATS rates equal to $0.0065 per ATS minute of use pursuant to section 61.3(qq) of the Commission's rules, using an X-factor of 6.5 percent.[15] The Commission directed Windstream to establish actual price indexes, service categories, and service band indexes for traffic sensitive and trunking baskets.[16]

The Commission also granted Windstream a waiver to allow it to continue to receive ICLS for the converted study areas, in lieu of IAS; however Windstream's per-line ICLS was calculated at its trued-up 2007 per-line disaggregated ICLS amounts and capped at those per-line levels going forward. Windstream's aggregate annual ICLS was limited to an amount equal to its overall 2007 ICLS (after true-ups), and Windstream was required to forego recovering either a presubscribed interexchange carrier charge ("PICC") or carrier common line ("CCL") charge and from assessing a $7.00 non-primary residential line subscriber line charge ("SLC") in conjunction with its receipt of capped per-line ICLS.[17]

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14 *Windstream Order* at 5302, ¶ 18.

15 *Id.* at 5301, ¶ 16. Frontier Telephone was allowed to target its ATS rates to meet the primarily rural target of $0.0095 because it had 17 lines per square mile, which was below the 19 lines per square mile density threshold set forth in section 61.33(qq)(2). *Combined Price Cap Order* at ¶ 5.

16 *Windstream Order* at 5301-02, ¶ 17.

17 *Id.* at 5302-04, ¶¶ 20-22. The capped per-line amount was computed by dividing the final amount of 2007 ICLS by twelve times the average of line counts for December 31, 2006 and 2007. Given that final 2007 figures were not then available, the Commission granted Windstream an interim monthly ICLS amount by dividing the ICLS it actually received in December 2007 by December 31, 2007 line counts. Once final 2007 figures were available, interim disbursements would be trued up based on the final 2007 figures. *Id.* at 5303-04, ¶ 21. The Commission partially waived sections 54.901(a) and 54.903 of the rules to accomplish this result. The Commission also waived Section 69.3(i)(1) of its rules -- which requires that carriers withdrawing from a NECA pool provide NECA with notice no later than March 1 of the year in which it will establish its own annual access rate filing the following July 1 -- to permit Windstream to withdraw properties that had been in NECA's traffic sensitive pool on less than

VITELCO seeks to convert to price cap regulation utilizing this same framework.

A. VITELCO's Switched Access Rates Should Be Based On Existing Rates And Transitioned To The $0.0065 Per Minute Target Established in the *CALLS Order*.

Under the *CALLS Order,* switched access rates were reduced to specified target levels for each category of carrier. These reductions were effectuated by initially setting the X-factor under the CALLS plan at 6.5 percent, which was then applied to ATS switched access rates until those rates reached the specified target. Once that target was reached, the X-factor was adjusted to an inflation offset, effectively freezing switched rates under the price cap rules.[18]

Currently, VITELCO's interstate ATS switched access rate is $0.01317 per minute, which VITELCO proposes to transition down to $0.0065 per minute, consistent with the approach taken with respect to other price cap carriers operating under CALLS. This is the same approach to switched access rates that the Commission adopted in its *Windstream Order* and subsequently followed in its *Combined Price Cap Order, ACS Order*, and *CenturyTel Order*, and no reason exists to depart from that approach here.

B. VITELCO's Special Access Rates Should Be Based On Existing Special Access Rates Under Rate-of-Return Regulation.

VITELCO's price cap rates for special access services should be initialized at current rate-of-return levels without any future reductions as part of its election to price cap regulation. This is the same approach to special access rates that the Commission adopted in its *Windstream Order* and subsequently followed in its *Combined Price Cap Order, ACS Order*, and *CenturyTel Order*. No reason exists to depart from that approach here, particularly since VITELCO has relatively few special access customers.

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the required notice. *Id.* at 5304-05, ¶ 24. VITELCO respectfully requests a waiver of these same rules in order to achieve the same relief.

C. <u>The Commission Should Waive Certain Universal Service Rules to Ensure VITELCO's Continued Access To Necessary Universal Service Support.</u>

Upon an election of price cap regulation, VITELCO should be eligible to continue receiving universal service support to cover interstate access costs. As explained below, VITELCO faces significant and unique challenges in serving an insular area like the USVI. Access to universal service support is essential to VITELCO's ability to maintain and operate its network. However, the Commission's current rules do not explicitly set forth a process by which VITELCO can continue to receive universal support under a price cap regime. Indeed, section 54.901(a) of the Commission's rules makes ICLS "available" only "to a rate-of-return carrier."[19] At the same time, while CALLS established the $650 million IAS Fund for price cap carriers to receive universal service support to cover interstate access costs, the Commission tentatively concluded that carriers electing price cap regulation on a post-CALLS basis do not have access to this fund.[20]

Accordingly, in order to continue meeting the demands of serving an insular area, VITELCO requests the same limited waivers granted to Windstream, Puerto Rico Telephone, Consolidated, Frontier, ACS, and CenturyTel that will allow VITELCO to continue receiving support from the ICLS fund, although as a price cap carrier. Specifically, VITELCO requests a partial waiver of sections 54.901, 54.903, and any portions of sections 54.802 through 54.806 of the Commission's rules so that VITELCO may continue to receive ICLS at 2009 per-line disaggregated ICLS amounts, which would be frozen going forward. Furthermore, as the

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18 *CALLS Order,* 15 FCC Rcd at 13020-13022, ¶ 140-144.

19 47 C.F.R § 54.901(a) (explaining the calculation of ICLS "available to a rate-of-return carrier . . .").

20 *MAG Further Notice,* 19 FCC Rcd at 4163, ¶ 93.

Commission did with Windstream, VITELCO proposes that its future overall annual ICLS be capped at an amount equal to its overall 2009 ICLS, after application of any required true-ups. Consistent with the *Windstream Order*, VITELCO also agrees to forego any PICC or CCL charges that might otherwise be assessable under the Commission's price cap rules and agrees not to assess any increase in the non-primary residential SLC to take advantage of the $7.00 cap. VITELCO further recognizes and agrees that the requested waiver would be conditioned upon its adherence to the commitments discussed above and is subject to the Commission's access charge and universal service reform proceedings.

Generally, the Commission may waive its rules for good cause shown.[21] The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest.[22] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[23] In short, a waiver is justified when special circumstances warrant a

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21 47 C.F.R. § 1.3.

22 The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC,* 911 F.2d 803, 812 (D.C. Cir. 1990) (upholding the Commission's grant of a waiver "[g]iven the deference due the agency in matters of this sort"); *City of Angels Broadcasting, Inc. v. FCC,* 745 F.2d 656, 663 (D.C. Cir. 1984) (noting that the scope of review of a waiver determination by the Commission "is narrow and constrained"). As the D.C. Circuit has observed, the Commission's waiver determinations are entitled to heightened deference because "the agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety-value procedure for consideration of an application for exemption based on special circumstances." *AT&T Wireless Services, Inc. v. AT&T,* 270 F.3d 959, 965 (D.C. Cir. 2001) (internal quotation marks omitted).

23 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

deviation from general rules and such deviation will serve the public interest.[24] Such special circumstances plainly exist here.

In this case, strict compliance with the Commission's rules that make ICLS available only to rate-of-return carriers would be inconsistent with the public interest and would undermine the policy goals of post-CALLS price cap regulation. Because of the unique nature of an insular area such as the USVI and the significant challenges to VITELCO as the carrier-of-last-resort serving the islands, VITELCO's election of price cap regulation would simply not be feasible without the continued availability of ICLS support consistent with the *CALLS Order*.

As the Commission has acknowledged, insular areas are unique.[25] Carriers serving insular areas face formidable challenges because "insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations."[26] In the

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[24] *Northeast Cellular*, 897 F.2d at 1166; *see also Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, Order, 20 FCC Rcd 13566 (WCB 2005).

[25] *Rural Health Care Support Mechanism,* Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 24632-24633, ¶ 42 (2004); *see also Federal-State Joint Board on Universal Service,* Recommended Decision, 12 FCC Rcd 87,308, ¶ 434 (1996) ("*First Recommended Decision*") (recognizing "the special circumstances faced by carriers and consumers in the insular areas of the United States").

[26] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414-415 (1997) ("*First Report and Order*"); *see also Unserved Areas NPRM*, 14 FCC Rcd at 21181, ¶ 5 (1999) (noting that "[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country"); *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12226, ¶ 32 (2000) (finding that "subscribership levels are below the national average in ... certain insular areas").

Unserved Areas NPRM, which was initiated to examine areas with low penetration rates, the Commission tentatively concluded that the USVI is properly considered an insular area.[27]

As a carrier serving an insular area such as the USVI, VITELCO faces the following unique challenges:

- Geographic Isolation. A community isolated on an island suffers from much higher transportation-related costs because all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense.[28] In the event of an emergency, it is difficult or impossible to rely on rapid importation of spare parts or specialized personnel. As a result, VITELCO must stock substantially higher numbers of spares than a rural telephone company on the mainland.
- Topography. Insular areas, such as the USVI, are often formed as the result of volcanic activity, which leads to rough, rugged terrain composed mainly of volcanic rock, with extreme elevation changes over very short distances. The rocky makeup of the ground generally makes the use of underground or buried cable expensive. Furthermore, the warm, most tropical climate leads to enhanced

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27 *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21233-21234, ¶ 138 (1999) ("*Unserved Areas NPRM*").

28 *Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation and National Rural Utilities Cooperative Finance Corporation and its Subsidiaries; Applications for Consent to Assign and Transfer Control*, WC Docket No. 09-82, DA 09-2548, Order, 2009 FCC LEXIS 6191, ¶ 22 (2009) ("*ICC Order*") ("...the islands have ... high costs associated with transporting equipment and skilled technicians from the U.S. mainland"); *see also* Comments of the Public Service Commission of the United States Virgin Islands, CC Docket No. 96-45, at 3-4 (Dec. 17, 1999) ("VIPSC Comments"); Comments of the Government of Guam, CC Docket No. 96-45, at 3 (Dec. 17, 1999).

need for environmental protection for telecommunications equipment and infrastructure, all leading to higher operational costs.[29]

- Climate. The USVI is frequently subject to tropical storms and severe hurricanes, which often causes extensive damage to existing telecommunications infrastructure.[30] In addition, the high level of airborne salt from the ocean leads to accelerated corrosion and deterioration of telecommunications equipment and infrastructure.[31]

While incurring significantly higher operational costs, VITELCO is unable effectively to recover those costs over a large subscriber base due to the unique demographic challenges in the U.S. Virgin Islands. For example, consumers in insular areas experience a disproportionately high cost of living that can be seen in the increased cost of basic commodities and consumer goods as compared to the mainland.[32] In addition, consumer incomes in insular areas are markedly lower than those on the mainland. According to the 2000 U.S. Census, the median

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29 *See ICC Order* at ¶ 22; *Comments of Innovative Telephone*, CC Docket Nos. 00-256, 96-45, 98-77 and 98-166, at 3-4 (Feb. 4, 2002) ("Innovative Telephone Comments"); *VIPSC Comments* at 4.

30 *Innovative Telephone Comments* at 4. For example, in 2008, Hurricane Omar inflicted extensive network damage on VITELCO on the island of St. Croix. *See, e.g.*, FEMA Approves Additional $1.3 Million For USVI Hurricane Damage, Caribbean Net News, April 9, 2009, available at: http://www.caribbeannetnews.com/news-15568--19-19--.html (last visited Jan. 19, 2010). In 1989, the U.S. Virgin Islands were devastated by Hurricane Hugo, destroying, among other things, approximately 90% of the telephone lines on St. Croix and 60% of the lines on St. Thomas. *See generally* Michael York, *Deadly Hugo Slams Puerto Rico, Virgin Islands; Storm Leaves Thousands Homeless*, WASH. POST, Sept. 19, 1989, at A1. Prior to Omar and Hugo, VITELCO's network suffered significant damage due to Hurricanes Lenny (1999) and Marilyn (1995).

31 *ICC Order* at ¶ 22; *Innovative Telephone Comments* at 3.

32 The cost of living in the U.S. Virgin Islands is between 30 and 50 percent higher than that on the mainland. *See, e.g.*, Virgin Islands Moving Center, Cost of Living, available at: http://www.vimovingcenter.com/cost_of_living/ (last visited Jan. 19, 2010) (estimating that the cost of living in the U.S. Virgin Islands is on average 33% higher than most U.S. jurisdictions).

household income of the U.S. Virgin Islands is $24,704, which is 21.1% lower than the income level of Mississippi ($31,330), the poorest state on the mainland.[33] Indeed, approximately one third of U.S. Virgin Islands' residents live below the poverty line.[34]

Given these challenges, the realization of all of the public interest benefits of its conversion to price cap regulation depends on VITELCO's continued receipt of universal service support. Therefore, the Commission should grant a limited waiver of its rules to permit VITELCO to continue to receive high-cost support via ICLS, subject to the same stipulations set forth in the *Windstream Order*.

V. CONCLUSION

For the foregoing reasons, the Commission should grant VITELCO's petition, permitting VITELCO to elect price cap regulation no later than July 1, 2010 and waiving certain universal service high-cost support rules related to VITELCO's election.

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33 Based on 2000 census data, the median household income of the United States was $41,994. *See* U.S. Census Bureau, U.S. Summary 2000, issued July 2002 at 4, available at: http://www.census.gov/prod/2002pubs/c2kprof00-us.pdf (last visited Jan. 19, 2010). The median household income of the U.S. Virgin Islands was $24,704, (*see* U.S. Census Bureau, Population and Housing Profile: 2000, U.S. Virgin Islands, issued May 2003 at 4 available at: http://www.census.gov/prod/cen2000/island/VIprofile.pdf (last visited Jan. 19, 2010)), which is 21.1% lower than the income level of the poorest state, Mississippi ($31,330) (*see* U.S. Census Bureau, Mississippi 2000, issued Aug. 2002 at 4 (available at: http://www.census.gov/prod/2002pubs/c2kprof00-ms.pdf (last visited Jan. 19, 2010)).

34 *See* U.S. Census Bureau, Population and Housing Profile: 2000, U.S. Virgin Islands, issued May 2003, at 5.

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